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Appointments to fill vacancies in subsidiary organs and other appointments: appointment of three ad litem judges of the United Nations Dispute Tribunal

Letter dated 8 February 2010 from the Secretary-General addressed to the President of the General Assembly

I write to draw your attention to the need to respond urgently to the problem of the substantial backlog of cases that were transferred to the United Nations Dispute Tribunal when the structures of the old system of administration of justice were abolished. As you are aware, the General Assembly, in its resolution 63/253, decided to appoint three ad litem judges for a term of one year each to address the problem of the backlog of cases being transferred from the old system to the Dispute Tribunal. At its 78th plenary meeting, on 31 March 2009, the General Assembly, pursuant to the above-mentioned resolution, and on the recommendation of the Internal Justice Council (see A/63/489/Add.1), appointed the following persons as ad litem judges of the Dispute Tribunal: Mr. Michael Adams (Australia), Mr. Jean-François Cousin (France), and Ms. Nkemdilim Amelia Izuako (Nigeria) (see General Assembly decision 63/417 B). The terms of these three ad litem judges, serving in New York, Geneva and Nairobi, respectively, began on 1 July 2009.

The United Nations Dispute Tribunal, with its judges entirely new to the United Nations system, is in its first months of operations. Despite these facts, the Dispute Tribunal has been dealing with cases expeditiously, disposing of an average of approximately 16 cases each month. However, because the Dispute Tribunal began with a caseload of 161 cases on 1 July 2009 and continues to increase its docket by approximately 22 new cases per month, there is a grave danger that the backlog of cases will overwhelm the new system just as it begins its operations. This problem has been compounded by the transfer of 140 cases from the United Nations Administrative Tribunal, which was abolished as at 1 January 2010.

The Internal Justice Council, which was established by the General Assembly to help ensure independence, professionalism and accountability in the new system of administration of justice at the United Nations and to provide views on its implementation, has taken note of the situation and has expressed its alarm in a letter to me, which is attached for your consideration (see annex). The Chairperson of the Internal Justice Council, Ms. Kate O'Regan, has indicated that the Council

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feels that the threat of the United Nations Dispute Tribunal being "swamped" by the influx of new cases "before it has really got up and running" would "severely prejudice the implementation of the new system".

The Internal Justice Council has advised me that this undesirable result could be avoided if the terms of office of the current ad litem judges were to be extended for a further 12 months. The Council has also advised that the terms of office of the staff supporting these three judges should be similarly extended. The Council has stated that the ad litem judges have indicated their willingness to consider an extension, provided that notice of such an extension was to occur in a reasonable time. The Council requested that I take the necessary steps to arrange for the extension of the period of appointment of the ad litem judges for a further year.

Upon due consideration of the matter, I share the concern of the Internal Justice Council that the transfer of cases from the United Nations Administrative Tribunal to the United Nations Dispute Tribunal will create a substantial backlog that needs to be urgently addressed.

In this connection, I would be grateful if you could present the recommendations of the Internal Justice Council to the General Assembly for consideration by the Member States.

The resources requirements for the extension of the ad litem judges and their support staff, and other related requirements, would be funded under the provisions of section III of resolution 60/283, which has been extended until 30 April 2010 by the General Assembly, under paragraph 142 of its resolution 64/243.

I wish to emphasize that this action is required to address an immediate and unforeseen need. However, as you may be aware, the General Assembly has requested that the Secretariat conduct a review of the new system of administration of justice and report to it in the sixty-fifth session. The report will provide a comprehensive analysis of the functioning of the new system, including any actions required to enhance the capacity of any relevant Secretariat units that have a role in the new system of justice.

The recommendations of the International Court of Justice for General Assembly consideration and action are to appoint the following persons as ad litem judges of the United Nations Dispute Tribunal: Mr. Michael Adams (Australia), Mr. Jean-François Cousin (France), and Ms. Nkemdilim Amelia Izuako (Nigeria) for an additional one-year term of office beginning on 1 July 2010.

(*Signed*) **BAN** Ki-moon

Annex

As you are aware, the Internal Justice Council has the responsibility to report to the General Assembly on the implementation of the new internal justice system. The task of the Council is informed by its purpose, which is to "help ensure independence, professionalism and accountability" in the new system. To this end, the Council has just held a series of meetings in Geneva and Vienna with various role-players. These meetings have made it clear that the new system is up and running and that the Tribunals are working steadily to clear the backlog of cases from the old system, as well as deal with new cases that are being lodged. I note the judges' outstanding contribution to the disposal of cases before the Dispute Tribunal despite the limited resources available. As at 30 November 2009, the United Nations Dispute Tribunal judges in Geneva, Nairobi, and New York — including full-time, half-time, and ad litem judges — have issued over 150 orders, held over 140 hearings and issued approximately 83 judgements (including judgements on preliminary issues).

A matter of grave urgency has arisen, which is why I am writing to you. You will recall that the General Assembly approved the appointment of three ad litem judges of the United Nations Dispute Tribunal for a period of one year to ensure that the new Tribunal would have the capacity to manage both the cases from the old system and new cases. One ad litem judge has been allocated to each of the three seats of the Tribunal and their terms of office will expire on 30 June 2010. An analysis of the statistics makes plain that if the ad litem judges' terms of office are not extended, the United Nations Dispute Tribunal will be unable to clear the backlog of old cases, particularly in the light of the fact that some 140 cases from the old United Nations Administrative Tribunal will be received by the United Nations Dispute Tribunal on 1 January 2010. I attach a table setting out the relevant information (see enclosure).

The Internal Justice Council is particularly anxious that the new United Nations Dispute Tribunal not be swamped before it has really got up and running, which would severely prejudice the implementation of the new system. In our view, this result could be avoided if the terms of the office of the current ad litem judges were to be extended for a further 12 months. We have taken the liberty of exploring with the three judges whether they would be available for appointment for a further year and each has indicated that they would be, if advised in good time.

The purpose of the present letter is therefore to ask you to consider taking the necessary steps to arrange for the extension of the period of appointment of those ad litem judges for a further year. We would also request a similar extension of the terms of office of the support staff who have been appointed to assist the ad litem judges.

Should you wish to discuss this with me personally I would be happy to do so. We would also be available to furnish any further information you may require.

(*Signed*) **Kate O'Regan**
Chairperson
Internal Justice Council

Enclosure

United Nations Dispute Tribunal status of cases

As of 1 July 2009, a total of 161 cases have been transferred to the three United Nations Dispute Tribunal Registries from the Joint Appeals Board/Joint Disciplinary Committee secretariats in Geneva, Nairobi, New York and Vienna. In addition to these cases, from 1 July to 30 November 2009, the three United Nations Dispute Tribunal registries also registered a total of 112 new cases. As shown in the table below, the Dispute Tribunal has disposed of 54 cases transferred from the Joint Appeals Board/Joint Disciplinary Committee secretariats and 23 newly registered cases in the first five months of its operations. The disposal of cases transferred from the Joint Appeals Board/Joint Disciplinary Committee secretariats has been a priority for the Dispute Tribunal and all its judges (full-time, half-time and ad litem judges). There has been an average monthly disposal rate of 15.8 cases whereas, on average, 22.4 new cases are registered every month before the Dispute Tribunal. Further, the Dispute Tribunal will receive a total of 140 cases from the United Nations Administrative Tribunal when it closes down on 31 December 2009. These cases will be allocated among the three registries of the Tribunal as shown in the table below. Considering the Dispute Tribunal's projected caseload as at 30 June 2010, the continued service of ad litem judges for a further year would seem to be essential if the Dispute Tribunal is to deliver timely justice.

	Geneva	*Nairobi*	*New York*	*Total*
Old JAB, JDC and UNAT cases transferred to UNDT				
Number of JAB/JDC cases transferred to UNDT	61	46	54	161
Number of JAB/JDC cases disposed of from 1 July to 30 November 2009	35	7	12	54
Number of UNAT cases to be transferred to UNDT on 31 December 2009	55	38	47	140
Average monthly "rate" of disposal of transferred JAB/JDC cases	7	1.4	2.4	10.8
New applications filed before UNDT				
Number of new applications registered as at 30 November 2009	36	27	49	112
Number of new cases disposed of as at 30 November 2009	9	10	6	25
Average monthly "rate" of registering new applications	7.2	5.4	9.8	22.4
Projections				
Expected number of transferred JAB/JDC and UNAT and new cases pending as at 30 June 2010[a]	95	112	163	370
Expected number of transferred JAB/JDC and UNAT cases pending as at 30 June 2010[b]	32	67.2	70.8	170

Abbreviations: JAB = Joint Appeals Board; JDC = Joint Disciplinary Committee; UNAT = United Nations Administrative Tribunal; UNDT = United Nations Dispute Tribunal.

[a] Number obtained by computing the number of cases transferred from the JAB/JDC and those newly filed pending as at 30 November 2009, together with the number of United Nations Administrative Tribunal cases expected to be transferred on 31 December 2009 and new cases expected to be registered until 30 June 2010, minus the average number of transferred and new cases expected to be disposed of as at 30 June 2010.

[b] Number obtained by computing the number of cases transferred from the Joint Appeals Board/Joint Disciplinary Committee, pending as of 30 November 2009, together with the number of United Nations Administrative Tribunal cases expected to be transferred on 31 December 2009, minus the average number of transferred cases expected to be disposed of as at 30 June 2010.